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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,734	01/13/2004	Paul D. Panetta	50005-107/BAT-060	4882
7590	03/28/2005		EXAMINER	
Woodard, Emhardt, Moriarty, McNett & Henry LLP Suite 3700 Bank One Center/Tower 111 Monument Circle Indianapolis, IN 46204-5137				LARKIN, DANIEL SEAN
		ART UNIT		PAPER NUMBER
		2856		
DATE MAILED: 03/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/757,734	PANETTA ET AL.	
	Examiner	Art Unit	
	Daniel S. Larkin	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-16 and 23-25 is/are rejected.
- 7) Claim(s) 17-22 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>13 January 2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

2. Claims 17-22 and 24 are objected to because of the following informalities:

Re claim 17, claim lines 2, 4, and 5: The term "fermentor" should be corrected to read -- fermenter --.

Re claim 17, claim line 3: The "comma" should be corrected with a -- semicolon --.

Re claim 17, claim line 5: The conjunction -- and -- should be inserted after the term "transducer".

Re claim 20, claim line 3: The term "fermentor" should be corrected to read -- fermenter --.

Re claim 24, claim lines 2: The term "fermentor" should be corrected to read -- fermenter --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 and 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, claim lines 1-3: The claim is deemed to be indefinite because the claim fails to recite the methodology used to monitor a fermentation process. Moreover, the one limitation cited does not provide any guidance in how the detection of the ultrasound is used as a tool in monitoring a fermentation process.

Re claims 3 and 4: The term "common" is deemed to be indefinite because the term common is a relative term which is undefined in the claim and specification.

Re claim 12, claim lines 1-3: The claim is deemed to be indefinite because the claim fails to recite the methodology used to monitor a fermentation process.

Re claim 23, claim lines 1 and 2: The claim is deemed to be indefinite because the claim fails to recite the methodology used to determine cell growth.

Re claim 25, claim lines 1-3: The claim is deemed to be indefinite because the claim fails to recite the methodology used to monitor the cell size and number per volume.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,397,734 (Atzinger).

The reference to Atzinger discloses a device for detecting the raising of dough by measuring the reflection of ultrasonic signals from the cells that make up the dough. The making of bread is a fermentation process. Yeast present in the dough make the dough rise.

Allowable Subject Matter

7. The following is a statement of reasons for the indication of allowable subject matter:

Prior art was not relied upon to reject claims 17-22 because the prior art fails to teach and/or make obvious a monitoring system utilizing a transducer within a fermenter and determining ultrasonic backscattering from the contents of the fermenter as a function of fermentation time in combination with the remaining limitations of the claim.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited all relate to the presence of ultrasonic transducers placed within a fermenter as a means of monitoring a fermentation process.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Larkin whose telephone number is 571-272-2198. The examiner can normally be reached on 8:00 AM - 5:00 PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Larkin
AU 2856
21 March 2005



DANIEL S. LARKIN
PRIMARY EXAMINER